
SUBSTITUTE SENATE BILL 5695

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Honeyford, Winsley, Mulliken, Johnson, T. Sheldon, Zarelli, Oke and Rasmussen)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to declaring buildings used for criminal activity
2 to be a nuisance; adding a new chapter to Title 7 RCW; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Building" includes, but is not limited to, any structure or
8 any separate part or portion thereof, whether permanent or not, or the
9 ground itself.

10 (2) "Criminal activity" means a pattern of criminal activity
11 including felonies and misdemeanors.

12 NEW SECTION. **Sec. 2.** Every building or unit within a building
13 used for the purpose of aiding, promoting, or conducting criminal
14 activity, and every building or unit within a building wherein or upon
15 which such acts take place, is a nuisance which shall be enjoined,
16 abated, and prevented, whether it is a public or private nuisance. In
17 a multiunit building only the offending unit shall be declared a

1 nuisance, and only the offending unit shall be enjoined, abated, and
2 prevented.

3 NEW SECTION. **Sec. 3.** Any person with legal standing and who
4 resides, works in, or owns property in the same multifamily building,
5 apartment complex, or within a one-block radius may bring an action as
6 provided for in section 2 of this act by filing a complaint with a law
7 enforcement agency in the county in which the property is located.
8 Such action shall be commenced by the filing of a complaint alleging
9 the facts constituting the nuisance. Such action may also be commenced
10 by any public agency.

11 Any complaint filed under this chapter shall be verified or
12 accompanied by affidavit. A copy of the complaint and affidavit must
13 be served on the legal owner of the property, if different from the
14 current occupant. For purposes of showing that the owner or his or her
15 agent has had an opportunity to abate the nuisance, the affidavit shall
16 contain a description of all attempts by the applicant to notify and
17 locate the owner of the property or the owner's agent, including at
18 least one attempt to notify the owner or owner's agent by registered
19 mail.

20 In addition, the affidavit shall describe in detail the adverse
21 impact associated with the property on the surrounding neighborhood.
22 "Adverse impact" includes, but is not limited to, the following: Any
23 recent search warrants served on the property where evidence of
24 criminal activity was seized; recent arrests of persons who frequent
25 the property for purposes of criminal activity; a recent increase in
26 the number of complaints made to law enforcement of illegal activity
27 associated with the property which result in arrests for criminal
28 activity; recent increases in arrests for weapons violations of persons
29 who frequent the property; and recent increases in graffiti or garbage
30 in the immediate vicinity.

31 Upon receipt of the complaint, the law enforcement agency shall
32 conduct an investigation into the allegations and, if probable cause is
33 found that a violation of this chapter is occurring, the complaint and
34 results of the investigation shall be filed in the county superior
35 court. After receiving the complaint, the court shall grant a hearing
36 within five business days or seven calendar days.

1 NEW SECTION. **Sec. 4.** Upon application for a temporary restraining
2 order or preliminary injunction, the court may, upon a showing of good
3 cause, issue an ex parte restraining order or preliminary injunction,
4 preventing the defendant and all other persons, other than the legal
5 owner, from removing or in any manner interfering with the personal
6 property and contents of the place where the nuisance is alleged to
7 exist and may grant such preliminary equitable relief as is necessary
8 to prevent the continuance or recurrence of the nuisance pending final
9 resolution of the matter on the merits. However, pending the decision,
10 the stock in trade may not be so restrained, but an inventory and full
11 accounting of all business transactions may be required.

12 The restraining order or preliminary injunction may be served by
13 handing to and leaving a copy with any person in charge of the place or
14 residing in the place, or by posting a copy in a conspicuous place at
15 or upon one or more of the principal doors or entrances to the place,
16 or by both delivery and posting. The officer serving the order or
17 injunction shall forthwith make and return into court an inventory of
18 the personal property and contents situated in and used in conducting
19 or maintaining the nuisance. Additionally a copy of the restraining
20 order or preliminary injunction must be sent by registered mail to the
21 owner of the building.

22 Any violation of the order or injunction is a contempt of court,
23 and where such order or injunction is posted, mutilation or removal
24 thereof while the same remains in force is a contempt of court if such
25 posted order or injunction contains a notice to that effect.

26 NEW SECTION. **Sec. 5.** A temporary restraining order or preliminary
27 injunction shall not issue under this chapter except upon the giving of
28 a bond or security by the applicant, in the sum that the court deems
29 proper, but not less than one thousand dollars, for the payment of such
30 costs and damages as may be incurred or suffered by any party who is
31 found to have been wrongfully restrained or enjoined. A bond or
32 security shall not be required of the state of Washington, municipal
33 corporations, or political subdivisions of the state of Washington.

34 NEW SECTION. **Sec. 6.** An action under this chapter shall have
35 precedence over all other actions, except prior matters of the same
36 character, actions under chapter 7.43 RCW, criminal proceedings,

1 election contests, hearings on temporary restraining orders and
2 injunctions, foreclosures by a legal owner, and actions to forfeit
3 vehicles used in violation of the uniform controlled substances act.

4 NEW SECTION. **Sec. 7.** (1) If the complaint under this chapter is
5 filed by a citizen, the complaint shall not be dismissed by the citizen
6 for want of prosecution except upon a sworn statement made by the
7 citizen and the citizen's attorney, if the citizen has one. The
8 statement shall set forth the reasons why the action should be
9 dismissed. The case shall only be dismissed if so ordered by the
10 court.

11 (2) In case of failure to prosecute the action with reasonable
12 diligence, or at the request of the plaintiff, the court, in its
13 discretion, may substitute any other citizen consenting to be
14 substituted for the plaintiff.

15 NEW SECTION. **Sec. 8.** A copy of the complaint, together with a
16 notice of the time and place of the hearing of the action shall be
17 served upon the defendant at least three business days before the
18 hearing. Service may also be made by posting the papers in the same
19 manner as is provided for in section 4 of this act. In addition to
20 service by posting, a copy of the complaint must be sent by registered
21 mail to the owner of the building or the agent of the owner. If the
22 hearing is then continued at the request of any defendant, all
23 temporary orders and injunctions shall be extended as a matter of
24 course.

25 NEW SECTION. **Sec. 9.** (1) Except as provided in subsection (2) of
26 this section, if the existence of the nuisance is established in the
27 action, an order of abatement shall be entered as part of the final
28 judgment in the case. Plaintiff's costs in the action, including those
29 of abatement, are a lien upon the building or unit within a building,
30 subject to the lien of the legal owner. The lien is enforceable and
31 collectible by execution issued by order of the court.

32 (2) If the court finds and concludes that the owner of the building
33 or unit within a building:

34 (a) Had no knowledge of the existence of the nuisance or has been
35 making reasonable efforts to abate the nuisance;

1 (b) Has not been guilty of any contempt of court in the
2 proceedings; and

3 (c) Will immediately abate any such nuisance that may exist at the
4 building or unit within a building and prevent it from being a nuisance
5 within a period of one year thereafter,
6 the court shall, if satisfied of the owner's good faith, order the
7 building or unit within a building to be delivered to the owner, and no
8 order of abatement shall be entered. If an order of abatement has been
9 entered and the owner subsequently meets the requirements of this
10 subsection, the order of abatement shall be canceled.

11 NEW SECTION. **Sec. 10.** Any final order of abatement issued under
12 this chapter shall:

13 (1) Direct the removal of all personal property subject to seizure
14 and forfeiture under RCW 69.50.505 or other law from the building or
15 unit within a building, and direct the commencement of proceedings to
16 forfeit the property under the forfeiture provisions of RCW 69.50.505
17 or other law;

18 (2) If the building or unit is not subject to the interests of
19 innocent legal owners, provide for the immediate closure of the
20 building or unit within a building against its use for any purpose, and
21 for keeping it closed for a period of one year unless released sooner
22 as provided in this chapter; and

23 (3) State that while the order of abatement remains in effect the
24 building or unit within a building shall remain in the custody of the
25 court.

26 NEW SECTION. **Sec. 11.** In all actions brought under this chapter,
27 the proceeds and all moneys forfeited under the forfeiture provisions
28 of RCW 69.50.505 or other law shall be applied as follows:

29 (1) First, to the fees and costs of the removal and sale;

30 (2) Second, to the allowances and costs of closing and keeping
31 closed the building or unit within a building;

32 (3) Third, to the payment of the plaintiff's costs in the action;
33 and

34 (4) Fourth, the balance, if any, to the owner of the property.

35 If the proceeds of the sale of items subject to seizure and
36 forfeiture do not fully discharge all of the costs, fees, and

1 allowances, the building or unit within a building shall then also be
2 sold under execution issued upon the order of the court, and the
3 proceeds of the sale shall be applied in a like manner.

4 A building or unit within a building shall not be sold under this
5 section unless the court finds and concludes by clear and convincing
6 evidence that the owner of the building or unit within a building had
7 actual or constructive knowledge or notice of the existence of the
8 nuisance. However, this shall not be construed as limiting or
9 prohibiting the entry of any final order of abatement as provided in
10 this chapter.

11 NEW SECTION. **Sec. 12.** An intentional violation of a restraining
12 order, preliminary injunction, or order of abatement under this chapter
13 is a contempt of court as provided in chapter 7.21 RCW.

14 NEW SECTION. **Sec. 13.** Whenever the owner of a building or unit
15 within a building upon which the act or acts constituting the contempt
16 have been committed, or the owner of any interest in the building or
17 unit has been found in contempt of court, and fined in any proceedings
18 under this chapter, the fine is a lien upon the building or unit within
19 a building to the extent of the owner's interest, subject to the lien
20 of the legal owner. The lien is enforceable and collectible by
21 execution issued by order of the court.

22 NEW SECTION. **Sec. 14.** The abatement of a nuisance under this
23 chapter does not prejudice the right of any person to recover damages
24 for its past existence.

25 NEW SECTION. **Sec. 15.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act
30 constitute a new chapter in Title 7 RCW.

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